
(2008) 07 P&H CK 0117
In the Punjab And Haryana At Chandigarh

Smt. Mahindro

APPELLANT

Vs

Secretary Health Services and Others

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Medical Termination of Pregnancy Act, 1971 — Section 3

Citation : (2009) 154 PLR 89 : (2009) 1 RCR(Civil) 735

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Judgment and decree dated 7.1.2006 passed by Additional District Judge, Panipat, is under challenge in the present Regular Second Appeal preferred by the plaintiff.

2. Briefly stated, the facts available on record are that the plaintiff is resident of village Seenk. She is married and had three children, two sons namely Anwar and Alijan; aged 10 and 6 years respectively and a daughter namely Reena, 8 years old in the year 1994. She wanted not to have anymore child in family. The plaintiff claims to have contacted a Registered Medical Practitioner namely, Ranbir Singh and his wife, who are social workers. They advised the plaintiff to undergo sterilization operation. It is alleged that plaintiff was taken to the Primary Health Centre, Naultha, for sterilization operation. She was introduced to defendant No. 2, Medical Officer Primary Health Centre, Naultha. A camp was organized at Primary Health Centre Naultha by the defendants for performing sterilization operations. The plaintiff was taken to the said camp on 21.7.1994. The sterilization operation was, performed upon her and she was issued a certificate on the same date. It has further been alleged that the plaintiff was assured that she would not conceive a child in future after the sterilization operation. It is stated that even after the aforesaid operation she conceived in the year 1995. She approached for abortion but the doctors advised her against it on April 8, 1995. The plaintiff gave birth to twins (girls). Plaintiff served a legal

notice dated 7.7.2000 upon defendants claiming compensation of Rs. 3 lacs and also interest @ 18%. After the notice, the present suit came to be filed as an indigent person claiming compensation of Rs. 3 lacs. She was declared as indigent person vide order dated 11.3.2004. The plaintiff pleaded dereliction of duty on the part of defendants No. 1 and 2. Defendants in their disclaimer filed to the suit denied the allegations of negligence and dereliction of duty while admitting the performance of tubectomy upon the plaintiff. They pleaded that 100% success is not possible in such an operation. Defendants also stated that the plaintiff did not consult the operating Surgeon when she conceived. They denied their liability for payment of any such compensation.

3. As many as eight issues were framed by the trial Court on the (sic) of the pleadings of the parties. However, the contentious issue is issue No. 1, which reads as under:

Whether the plaintiff is entitled for the damages/compensation to the tune of Rs. 3,00,000/- as expenses for Indu and Bindu born to the plaintiff on 8.4.1999 after performance of sterilization operation by defendants No. 2 and 3, as alleged? OPP

4. After the parties led their respective evidence, the trial court vide its judgment and decree dated 7.3.2005 decreed the suit of the plaintiff and awarded compensation of Rs. 2 lacs for maintenance of the twins (daughters of the plaintiff).

Aggrieved of the aforesaid judgment and decree, the defendants preferred an appeal in the Court of Additional District Judge, Panipat. The Appellate Court vide judgment and decree dated 7.1.2006 has set aside the judgment and decree of the trial court and dismissed the suit. Learned Counsel for the appellant has vehemently argued that the failure of the operation is sufficient to establish the negligence on the part of the operating Surgeon and thus, it was due to sheer negligence of the doctor that plaintiff gave birth to two female children despite sterilization operation, which is an additional burden upon her and the family. The plaintiff being a poor lady is unable to shoulder the burden of five children particularly when twins have been born on account of unwanted pregnancy.

5. The short question that arises for consideration in the present case is whether a doctor can be burdened with the liability of compensation on account of failure of tubectomy operation or the plaintiff is required to establish the negligence on the part of the operating surgeon.

6. The issue is no more res integra and is concluded by the judgment of Hon'ble the Supreme Court in the case of State of Punjab Vs. Shiv Ram and Others, which reads as under:

We are, therefore, clearly of the opinion that merely because a woman having undergone a sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The claim in tort can be

sustained only if there was negligence on the part of the surgeon in performing the surgery. The proof of negligence shall have to satisfy Bolam's test. So also, the surgeon cannot be held liable in contract unless the plaintiff alleges and proves that the surgeon had assured 100% exclusion or pregnancy after the surgery and was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery. As noted in various decisions which we have referred to hereinabove, ordinarily a surgeon does not offer such guarantee.

7. In so far as the question of liability is concerned, Hon"ble the Apex Court has held as under:

The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Indian Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to Sub-section (2) of Section 3 provides:

Explanation II- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

8. This judgment has been followed by Hon"ble the Apex Court in the case of State of Haryana and Others Vs. Raj Rani, .

9. Applying the ratio of aforementioned judgments to the facts of the present case it is useful to notice that only vague allegations of negligence have been made. There is no specific evidence/material on record to even suggest negligence on the part of the operating Surgeon what to say of establishing negligence. Even after conceiving unwanted pregnancy, she did not contact the operating Surgeon or any one else and proceeded for abortion which was not advised. There is no evidence on record that to whom she approached for abortion. It is medically established that there is no fool proof guarantee of success of sterilization operation even if the surgeries are performed by the best Surgeons without any negligence or lapse in performance of such operations.

10. In the absence of evidence of negligence, no liability can be imposed upon the Surgeon or hospital/institution where the operation was conducted. I do not find any infirmity in the impugned judgment of the lower Appellate Court. No substantial question of law arises.

No merit, appeal dismissed.